IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 13TH NOVEMBER 2006 / 22ND KARTHIKA 1928

RSA.No. 829 of 2006()
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AS.214/2002 of II ADDL. DISTRICT COURT, PALAKKAD
OS.513/2001 of MUNSIFF COURT, CHITTUR
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: APPELLANT/RESPONDENT/DEFENDANT.
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KRISHNANKUTTY, S/O. ANNAMALA MUDALIYAR,
RESIDING AT ATHICODE, PANAYUR AMSOM, POLPULLY,
PALAKKAD TALUK.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON
SRI.SREEKANTH.K.R
SRI.JIBU P THOMAS
SRI.SUNIL J.CHAKKALACKAL

RESPONDENTS: APPELLANT/PLAINTIFF.
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MANOHARAN, S/O. MADHAVAN,
RESIDING AT 5TH MILE, KUTTIPALLAM VILLAGE,
CHITTUR TALUK, PALAKKAD DISTRICT.

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 13/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**THOTTATHIL B. RADHAKRISHNAN, J**

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**R.S.A. NO.829 Of 2006**

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**Dated this the 13th day of November, 2006**

**J U D G M E N T**

The defendant in a suit for recovery of money on the strength of a promissory note is the appellant. He contested the suit contenting that the plaintiff runs chitties, there was a transaction between the plaintiff and the defendant resulting in certain litigations and that Ext.A1 the said promissory note was given on 19.10.2000 as a result of mediation at the instance of certain persons to settle the dispute relating to certain chitty transactions. The plaintiff gave evidence as PW1. Defendant was examined as DW1. DW2 is the alleged mediator. The trial court did not advert to the oral evidence but dismissed the suit by taking the view that as on date of the alleged transaction the parties were involved in some litigations and therefore the case of the plaintiff is shrouded in suspicion, not removed to the satisfaction of the court.

2. Lower appellate court reversed the dismissal and granted a decree with interest at 12% as costs after appreciating the entire oral evidence on record. It noticed the crucial portion of the testimony of

the defendant as DW1 to the effect that Ext.A1 is in his own handwriting and that he has signed it and still further that he had received the consideration mentioned therein on that day for the purpose of his domestic affairs and that the document A1 was executed after being satisfied of the consideration. The lower appellate court was not prepared to accept the evidence of DW2, the alleged mediator, because he had deposed that the defendant had signed in white paper and that the said paper was taken by the plaintiff. Lower appellate court also noticed that the plaintiff, in cross examination, denied the suggestion that the promissory note was executed as a result of mediation of disputes relating to the chitty transaction. Considering the manner in which the oral evidence has been appreciated by the lower appellate court, which it is entitled and expected to do within the parameters of Section 96 of the Code of Civil Procedure, I do not find any illegality in the decree of the lower appellate court reversing the findings of the trial court, rendered without adverting to the oral evidence.

3. The learned counsel for the appellant urged that permissible and mandatory presumptions under the Negotiable Instruments Act could not be drawn in a case where the mere admission of the signature on

the document is coupled with proof as to existence of circumstance which would tend to negate the credibility of the transaction. He is right. But such proposition has absolutely no appliction to the facts of the case, in view of the evidence on record and because the impugned decree granted by the lower court stands not on any presumptions, but on the evidence on record, including the deposition of the defendant as DW1.

4. It was further urged that the rate of interest granted at 12% is low. I am not inclined to hold so because promissory note is a negotiable instrument and provisions of the Negotiable Instruments Act applies.

In the result, the appeal fails and the same is dismissed in limine.

**THOTTATHIL B. RADHAKRISHNAN,**
**JUDGE.**

SJ